



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,523	06/21/2001	Joel L. Passke	005127.00094	5745

22907 7590 02/26/2003

BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
----------	--------------

3728

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/887,523

Applicant(s)

PASSKE ET AL.

Examiner

Anthony D Stashick

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. 5,845,417 in view of the European reference to Opal Limited 1,074,193 (Opal '193).

Reed et al. '417 discloses all the limitations of the claims including the following: an upper (see Figure 5); a sole structure 204 attached to the upper (see Figure 5); an air-filled bladder 210 in fluid communication with ambient air (surrounding air within the shoe) and attached to the article of footwear (attached to the sole); a filter 214 in fluid communication with the bladder and ambient air (see col. 8, lines 32-53 and 63-66 and col. 9, line 66 through col. 10, line 22); the filter being structured to permit ambient air to enter the bladder; the filter located in the sole. Reed et al. '417 does not teach that the filter can restrict liquids and particulates from entering the bladder, the material makeup of the filter, a perforated layer located over the filter. Opal '193 teaches that a filter 26 for filtering the air that is received within a bladder of a shoe can be made of a material, such as Gore-Tex<sup>®</sup> which is known to be made of expanded polytetrafluoroethylene, which would allow for the shoe to breathe, letting air and liquid vapor out of the shoe while allowing air into the shoe. Opal '193 also teaches that a perforated layer 22 can be located on top of the filter to aid in ventilation while preventing large debris from entering the upper. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the filter of Reed et al. '417 out of Gore-Tex<sup>®</sup>, as taught by Opal '193, to allow for the bladder to let air into the shoe and allow for the

Art Unit: 3728

escape of air and vapor from the shoe bladder. It also would have been obvious to place a perforated layer, such as that shown Opal '193, over the Gore-Tex<sup>®</sup> layer, as taught by Opal '193, to protect the Gore-Tex<sup>®</sup> layer from being damaged while allowing more air into the bladder and preventing large particles from entering the bladder.

3. Claims 1-14 and 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the French reference to Colesnicenco Niculae 2,670,369 (Colesnicenco '369) in view of the European reference to Opal Limited 1,074,193 (Opal '193). Colesnicenco '369 discloses a sole structure; an air-filled bladder 6 in fluid communication with ambient air (through 1-3) and attached to the article of footwear (see Figure 6); a filter 1 in fluid communication with the bladder and ambient air (see Figures); the filter being structured to permit ambient air to enter the bladder; the filter being located in the upper. Colesnicenco '369 does not teach that the filter can restrict liquids and particulates from entering the bladder.

Colesnicenco '369 does not teach that the filter can restrict liquids and particulates from entering the bladder, the material makeup of the filter, a perforated layer located over the filter or the filter located in the sole of the shoe. Opal '193 teaches that a filter 26 for filtering the air that is received within a bladder of a shoe can be made of a material, such as Gore-Tex<sup>®</sup> which is known to be made of expanded polytetrafluoroethylene, which would allow for the shoe to breathe, letting air and liquid vapor out of the shoe while allowing air into the shoe. Opal '193 also teaches that a perforated layer 22 can be located on top of the filter to aid in ventilation while preventing large debris from entering the upper. Therefore, it would have been obvious, to make the filter of Colesnicenco '369 out of Gore-Tex<sup>®</sup>, as taught by Opal '193, to allow for the bladder to let air into the shoe and allow for the escape of air and vapor from the shoe bladder. It also would have been obvious to place a perforated layer, such as that shown Opal '193, over the Gore-Tex<sup>®</sup> layer, as taught by Opal '193, to protect the

Art Unit: 3728

Gore-Tex® layer from being damaged while allowing more air into the bladder and preventing large particles from entering the bladder.

*Response to Arguments*

4. Applicant's arguments filed December 11, 2002 have been fully considered but they are not persuasive. Applicant argues that the combination of Reed with Opal would destroy the Reed reference as Reed allows for liquid to pass through the filter and the material of Opal would prevent the passage of fluid through the filter. Opal is designed to allow for the passage of water vapor through the material in which it is made, thereby allowing for the passage of liquid that has been heated by the foot to pass through the material as a vapor. The purpose of the Opal ventilation is to allow any condensation that may build up in the shoe to be extricated by the ventilation system to keep the user's foot dry. Claim 1 only requires that the filter "restrict" the movement of fluids through the material and not "prevent" the movement of fluids through the material as implied by applicants arguments. Therefore, Reed et al. alone would read on the limitations of claim 1 as claimed. With respect to applicant's argument that Opal does not disclose a bladder, this argument is not clearly understood. The channels and cavity located on the insole are the "bladder" in as much as they perform the same function of a bladder allowing air to enter the shoe and exit the shoe by expelling the air from the shoe. Therefore, the bladder is made up of the outsole and insole together allowing a pumping action of the shoe sole to dissipate air throughout the shoe (see paragraph 0019).

*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3728

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Art Unit: 3728

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>



Anthony D Stashick  
Primary Examiner  
Art Unit 3728

ADS  
February 21, 2003